

BQC - 92 – 001

Date: January 10, 1992

To: Rural Health Clinics

RHC 1

From: Larry Tainter, Director  
Bureau of Quality Assurance

Subject: Federal Program Letter No. 91.46  
Implementation of Sections 1861(aa)(2) and (7) of the Social Security Act

The attached federal program letter is being sent to update you on two changes in the Social Security Act provided by section 4161(b) of the Omnibus Budget Reconciliation Act of 1990. These changes became effective October 1, 1991.

If you need further clarification, please contact Stephen D. Schlough, P.E., Chief, Facilities Need Analysis Section at (608) 266-3878.

SS/df 1219.nm

#### Attachments

cc: -BQC Staff  
-Office of Legal Counsel  
-Ann Haney, DOH Admin.  
-Kevin Piper, BHCF Dir.  
-HCFA, Region V  
-Illinois State Agency  
-Ohio State Agency  
-Michigan State Agency  
-Indiana State Agency  
-Minnesota State Agency  
-WI Coalition for Advocacy  
-Service Employees International Union  
-WI Counties Assn.  
-WI Medical Records Assn. Cons. Committee  
-WI Assoc. of Homes and Services for Aging  
-Comm. on Aging, Ext. Care Fac./HH (SMS)  
-WI Assn. of Nursing Homes  
-WI Assn. of Medical Directors  
-Admin., Div. of Care and Treatment Facilities  
-WI Assn. of Hospital SW and Discharge Planners  
-Bd. on Aging & Long-Term Care  
-Bureau of Design Prof., DRL  
-WI Homecare Organization  
-Bur. Long Term Support, DCS  
-WI Hospital Assn.  
-Hospice Organization of WI

Department of Health & Human Services  
Health Care Financing Administration  
Region V  
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Refer to: CO2

December 1991

**Division of Health Standards and Quality Regional Program Letter No. 91-46**

**Subject:** Implementation of Sections 1861 (aa) (2) and (7) of the Social Security Act – Certification Procedures for Rural Health Clinics – **ACTION**

The purpose of this program letter is to provide instructions for implementing two changes to the Social Security Act (the Act) provided by section 4161(b) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) affecting rural health clinics (RHCs). These changes became effective October 1, 1991. These instructions are to be followed until regulations and manual instructions are published.

1. EXPEDITED CERTIFICATION

Statutory Requirement

Section 1861(aa)(2) of the Act as amended by OBRA 90 requires that "If a State agency has determined under section 1864(a) that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later)."

Implementing Instructions

A facility must be notified in writing of its approval or disapproval to participate in the Medicare program no later than 60 days after the date the State agency has determined that the facility is or is not in compliance with all the RHC requirements, or the date of the facility's application, whichever is later. Therefore, the State agency must forward the RHC certification package to the Regional Office within 30 days following the initial survey.

2. ONE-YEAR WAIVERS

Statutory Requirement

Section 1861(aa)(7) requires the Secretary to waive for one year the RHC staffing requirement that the clinic employ a nurse practitioner, physician assistant, or certified nurse midwife or that such disciplines furnish services 50 percent of the time that the clinic operates if:

- the facility requests a waiver;

- the facility demonstrates that it has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse midwife in the previous 90 day period; and
- the facility is not making the request less than six months after the date of the expiration of any previous such waiver for the facility.

Approval of a requested waiver shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.

### Implementing Instructions

The waiver is applicable to facilities applying for RHC approval as well as participating RHCs. The State agency is responsible for recommending approval or disapproval of the requested waiver to the Regional Office within 30 days of receiving it. A waiver shall be deemed granted unless the waiver request is denied by the Regional Office within 60 days after the date the State agency receives the request. In such situations the effective date of the one year waiver is the 61st day after the date the request is received by the State agency.

The date the request for a waiver is received by the State agency (or the Regional Office) will be used the date to calculate retroactively the previous 90 day period.

The date the Regional Office approves the waiver will be used as the effective date of the one year waiver period.

#### A. Applying the Waiver to Applicants

In the initial packet of information sent to RHC applicants, the State agency should include a statement that if the applicant plans to request a waiver, the applicant must attach the request to the HCFA-29 along with documentation (see C below) that demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the 90 day period prior to submitting the waiver request or that such disciplines are unable to furnish services at least 50 percent of the time the clinic operates. The State agency must review this documentation and make a recommendation on the acceptance or rejection of the waiver request prior to scheduling an RHC survey. See section 2242 of the SOM.

If a facility is approved as an RHC with a one year waiver, the Regional Office will inform the RHC of the waiver approval and its effective and expiration dates in the letter notifying the RHC of its approval to participate in the Medicare program. Also, the RHC will be informed that another waiver cannot be approved if the request for the waiver is made less than six months after the expiration date of the previous waiver.

#### B. Applying the Waiver to Participating RHCs

A participating RHC may request a waiver either when it loses its nurse practitioner, physician assistant, or certified nurse-midwife or when it fails to meet the 50 percent staffing requirements regarding these disciplines.

Some RHCs will probably experience an unexpected loss of staff and, therefore, will not be able to demonstrate any effort to hire staff in the previous 90 day period. The State agency should advise

an RHC in this situation that it must comply with the staffing requirement within 90 days from the date it informed the State agency it no longer met the staffing requirement, or be terminated unless a waiver request is submitted by the RHC and approved by the Regional Office by the end of the 90 day period.

C. Documentation Demonstrating Efforts to Meet Staffing Requirements

The RHC must submit written documentation to the State agency demonstrating its reasonable efforts to hire the required staff. This documentation should evidence ongoing activities throughout the 90 day time period prior to making a waiver request. The following types of documentation would be acceptable:

- copies of letters sent to, and received from, potential hirees;
- copies of reports of telephone contacts with potential hirees, professional schools and organizations, recruiting services, etc.;
- information about trips to professional meetings educational institutions, and health care facilities for recruiting purposes;
- copies of advertisements for recruiting hirees; and
- results of personal interviews with potential hirees.

Please ensure that these procedures are implemented immediately. If you have any questions, please contact your principal program representative.

/s/ William F. Pfeifer  
Branch Chief  
Survey & Certification Operations Branch